SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 163

NORTH SIDE LAUNDRY COMPANY, A CORPORATION,
Appellant,

vs.

BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW, ALLEGHENY COUNTY

APPELLEE'S STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Board of Property Assessment, Appeals and Review of the County of Allegheny, Pennsylvania, appellee, pursuant to Rule 12, paragraph (3), of the Rules of this Court, makes the following statement disclosing matters and grounds making against the jurisdiction of this Court, asserted by appellant, and includes herein its motion to dismiss or affirm the judgment sought to be reviewed in this appeal:

(1) The decision of the Supreme Court of Pennsylvania in this case involves an interpretation of the Pennsylvania

statute governing the assessment of real estate for the purpose of local taxation. The decision reaffirms a prior decision of the Supreme Court of Pennsylvania (*United Laundries, Inc., et al.* v. *Board of Property Assessment*, 359 Pa. 195) involving the same appellant for a previous assessment period. Both the prior decision and the decision in this case hold that in the assessment of appellant's real estate under the applicable assessment statute, appellee Board properly determined that under the law of Pennsylvania appellant's real estate was an industrial plant and properly included the value of machinery and equipment in arriving at the assessment of such industrial plant as real estate. The decision in this case, as well as that in the prior case, is founded upon the settled decisional law of Pennsylvania interpreting and defining the term "real estate" as applied to an industrial plant as including all machinery and equipment in such plant essential to the operation thereof, referred to in Pennsylvania law as the "assembled industrial plant" doctrine.

(2) The decision in this case, as distinguished from the prior decision, holds that no violation of any federal right resulted from the fact that appellee Board did not include the value of machinery and equipment in other real estate enumerated by appellant, which, although termed "industries" by appellant, were held by the Supreme Court of Pennsylvania not to be industrial plants under the law of Pennsylvania, as above set forth.

(3) The Pennsylvania statute involved in this proceeding is the Act of 1933, P. L. 853, as amended, 72 PS 5020-201, et seq. Said statute provides for the assessment of *real estate* for the purpose of imposing local taxes based on such assessment. It is clear from the opinion of the Supreme Court of Pennsylvania in this case that the assess-

ment involved under the statute is not made the basis for an excise tax on "business" or "industry", and that it is not a tax assessment on "machinery and equipment" or on any other personal property. The inclusion of the value of machinery and equipment in the assessment of an "assembled industrial plant" under the statute arises by virtue of the meaning and definition ascribed to real estate under the settled decisional law of Pennsylvania.

(4) The determination of what constitutes real estate under state law by the highest court of that state is conclusive. Unless violative of Federal statute or interest, or discriminatory against such Federal interest, that determination will be binding upon the Supreme Court of the United States: *Defense Plant Corporation's Tax Assessment Case,* 350 Pa. 520, affirmed sub nom *Reconstruction Finance Corporation* v. *Beaver County,* 328 U. S. 204.

(5) The decision of the Supreme Court of Pennsylvania in this case, applying settled principles of the Pennsylvania law of real estate in the interpretation of the assessment statute under consideration is based on substantial non-Federal grounds and raises no Federal question: *Demorest* v. *City Bank Company,* 321 U. S. 36; *J. Bacon & Sons* v. *Martin,* 305 U. S. 380.

(6) Under the decisions of the Supreme Court of the United States the questions here raised by appellant have been decided adversely to its contentions: *Sunday Lake & Iron Company* v. *Township of Wakefield,* 247 U. S. 350; *Sioux City Bridge Company* v. *Dakota County, Nebraska,* 250 U. S. 441. The issue was so decided on strikingly similar grounds in *Armour Packing Company* v. *Lacey,* 200 U. S. 227.

WHEREFORE, appellee respectfully moves the Court to dismiss the appeal herein or to affirm the judgment of the Supreme Court of Pennsylvania.

BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW OF ALLEGHENY COUNTY, PENNSYLVANIA,
By NATHANIEL K. BECK,
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CHARLES ELMORE CROPLEY
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IN THE

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APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

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OPINION OF THE COURT BELOW.

The Opinion of the Supreme Court of Pennsylvania is attached as Appendix A to the jurisdictional statement heretofore filed and is officially reported at 366 Pa. 636.

JURISDICTION.

The jurisdiction of this Court is set forth in Appelpant's Jurisdictional Statement heretofore filed.

STATEMENT OF THE CASE.

The essential facts of the case are stated in the Appellant's Jurisdictional Statement heretofore filed.

SPECIFICATION OF ERROR.

The errors complained of are set forth in Appellant's Assignment of Errors heretofore filed.

SUMMARY OF THE ARGUMENT.

Appellant asserted throughout the State Courts that the Taxing Act of 1933, as construed by the Pennsylvania Courts, violated the equal protection clause of the 14th Amendment. The Supreme Court of Pennsylvania upheld the validity of the Pennsylvania Act. Therefore, the Court necessarily decided a federal question.

The federal question is substantial because the Act, as construed, taxes the personal property in Appellant's laundry and does not tax the personal property of the same class in other service businesses. A State statute which, as construed by the State Court, taxes the personal property of a laundry as real estate by virtue of the Assembled Industrial Plant Doctrine and fails to tax the personal property of other service businesses equally susceptible to the Assembled Industrial Plant Doctrine violates the equal protection clause of the 14th Amendment.

ARGUMENT.

1. A Federal Question Is Involved in This Appeal.

The Appellee's Motion to Dismiss or Affirm represents that the decision of the Supreme Court of Pennsylvania, from which this appeal was taken, is based upon substantial state grounds and raised no federal questions; that the Supreme Court of Pennsylvania was called upon to determine what was real estate within the County Assessment Law; that the Supreme Court of Pennsylvania upheld an assessment of Appellant's real estate; and that such determination is binding upon the Supreme Court of the United States.

This is not the case.

For the triennial 1948, 1949 and 1950 the Allegheny County Board of Property Assessment, Appeals and Review assessed the Appellant's machinery and equipment at $25,950. (R. 6 & 7). The Board assessed Appellant's land and buildings at $29,065. To determine Appellant's County tax, the County Authorities added the assessment of Appellant's machinery and equipment to the assessment of its land and buildings. The "machinery and equipment" was assessed separately from the land and buildings. By Act of the Pennsylvania Legislature assessments for the City of Pittsburgh and the County of Allegheny are made by a single Board—the Board of Property Assessment, Appeals and Review. Act of June 15, 1939, P. L. 346 (53 P. S. 8774). This Act provides that the Board of Property Assessment, Appeals and Review shall assess all taxable property and designate on its list that property not taxable by the City.

Although the County is permitted by an Act of Legislature (which Appellant challenges) to tax certain machinery, the City of Pittsburgh *is denied the right to tax machinery.* Act of 1901, P. L. 20, as amended by the Act of 1911, P. L. 287 (53 P. S. 9634). Therefore, the Board includes the value of machinery in assessments made for the County of Allegheny, but does not include the value of machinery in assessments made for the City of Pittsburgh, although the Board is assessing the identical property for tax purposes.

The assessment here complained of was made by the Board under the Act of 1933, P. S. 853, as amended by the Act of 1941, P. L. 219 (72 P. S. 5020-201) which provides:

> "The following subjects and property shall, as hereinbefore provided, be valued and assessed and subject to taxation* * * (a) All real estate to wit: Houses, lands, lots of ground, rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, meat houses, breweries, tan yards, fisheries and ferries, wharves, and all other real estate not exempt by law from taxation* * *."

In the triennial 1945, 1946 and 1947, the Board taxed the Appellant's machinery and equipment. It assessed the machinery and equipment and added this sum to the assessment for the land and buildings. To Appellant's objection the Board argued that a laundry was a "mill or manufactory" within the Act of 1933, *supra,* and that the machinery in a mill or manufactory was taxable because it would not be a mill or manufactory without the machinery and equipment. The Supreme Court of

Pennsylvania (359 Pa. 195, 1948) held that the Appellant's laundry was not a mill or manufactory but upheld the tax on the machinery by placing the laundry within the classification of the Act "all other real estate."

It was the Court's reasoning that the value of the land and building was enhanced by the machinery and equipment and by virtue of the Pennsylvania so-called Assembled Industrial Plant Doctrine, the machinery and equipment should be taxed as all other real estate. But in fact this was not an assessment of real estate and the Board never considered it an assessment of real estate. It was in fact an assessment of machinery and equipment which the Board, the County of Allegheny, the City of Pittsburgh and the Pittsburgh School District all considered as an assessment of machinery and equipment. The City of Pittsburgh and the Pittsburgh School District did not tax the machinery and equipment. Allegheny County taxed the machinery and equipment of Appellant's laundry, and the Supreme Court of Pennsylvania upheld this action by saying the machinery and equipment of the laundry was "all other real estate" within the Act. No federal question was raised and an appeal to this Court was not allowed.

When the Board assessed Appellant's machinery and equipment for the triennial 1948, 1949 and 1950, the Appellant charged that the Act of 1933, *supra*, as construed by the Pennsylvania Supreme Court violated the equal protection clause of the 14th Amendment to the Federal Constitution because similar machinery and equipment of other service businesses was not taxed (R. 5 & 30). This federal right was asserted by the Appel-

lant throughout the Pennsylvania Courts and each Court in turn necessarily passed upon the federal question. The Supreme Court stated that "The assessment by the Board is in accordance with the Constitution of the United States * * *." (R. 54). Appellee's assertion that there is no federal question raised is without a basis in law or fact.

The question decided by the Pennsylvania Courts and raised by this appeal is not *"What is real estate under the law of Pennsylvania?"* The question before this Court is *"Does the Pennsylvania County Assessment Law of 1933, as construed by the Supreme Court of Pennsylvania violate the equal protection clause of the 14th Amendment?"*.

In its Motion to Dismiss or Affirm the Appellee has relied upon the decision of this Court in the case of *Reconstruction Finance Corp. v. Beaver County,* 328 U. S. 204 (1945). The question presented in that case was whether the machinery in a government owned manufacturing plant could be taxed by Pennsylvania as a "manufactory" within the Act of 1933. The decision of this Court, in upholding the tax, has no bearing on the instant case because here an entirely different classification of the taxing act is involved.

2. The Federal Question Is Substantial.

The Act of 1933, *supra,* creates classifications for tax purposes. One of those classifications is "all other real estate." The Supreme Court of Pennsylvania has held that the machinery and equipment of the North Side Laundry Company (personal property unattached to the freehold) is taxable under this classification of the Act. The Court purported to justify the taxing of this personal property by declaring a laundry to be an industrial plant, but it is of little moment what the Court wants to call a laundry so long as it held that it did not fit the other business classifications in the Act. Appellant's complaint is that the Court held the laundry's machinery taxable as all other real estate and refused to let Appellant show that this was discriminatory.

It is true that the State has the power to classify for tax purposes, but arbitrary selection has never been considered classification. This Honorable Court has stated in the case of *Ohio Oil Co. v. Conway,* 281 U. S. 146 (1930), at page 160:

> "The State may classify broadly the subjects of taxation; but in doing so it must proceed upon a rational basis. The State is not at liberty to resort to a classification that is palpably arbitrary. The rule is generally stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' (Cases cited)."

The Pennsylvania Court has not held that the machinery in the laundry is real estate. To do so would be

ridiculous in view of the fact that the machinery consists of ironers, washers, tumblers, pressers, etc.,—strictly personal property unattached to the freehold. What the Court did hold was—by virtue of the so-called Pennsylvania Assembled Industrial Plant Doctrine, the machinery in the laundry was taxable within the classification of the Act "all other real estate."

The so-called Pennsylvania Assembled Industrial Plant Doctrine is a protective device used by the courts to foster industrial mortgages.

The Supreme Court of Pennsylvania in the case of *Ross v. Fairy Silk Mills,* 334 Pa. 305 (1939), at page 308 spoke of the "doctrine" as follows:

> "Due to the demands and requirements of our changing economic order, we early developed in this state the principle of an 'industrial mortgage' which included, as part of the freehold, personal property in and about a manufactory. This principle became more important as our industrial life expanded, so that the necessary credits to sustain and finance manufactories and other like industries could be obtained with some degree of certainty that the security offered would be continued. Therefore, it was held that where premises were used in manufacturing or a similar industry, the real estate and personal property necessary to the plant as a going concern were subjected to the lien of an industrial mortgage. This opened the way for persons interested in such industries to assure investors in a manufactory not only of a stable security for money loaned on the plant, but one that could not be broken down and destroyed by selling it piecemeal."

This doctrine has been extended to apply to office buildings, *Medical Tower Co. v. Otis Elevator Co.*, 104 F. 2d 133 (C. A. 3, 1939), apartment houses, *Land Title Bank & Trust Co., v. Stout*, 339 Pa. 302 (1940), and private dwellings, *Holland Furnace Co. v. Suzik*, 118 Pa. Sup. Ct. 405 (1935). In the instant case the Pennsylvania Supreme Court arbitrarily applied this doctrine to justify the taxing of laundry machinery and equipment and held that the machinery and equipment was taxable as "all other real estate" even though the refused evidence disclosed that the machinery and equipment of other service industries was not being taxed under the doctrine.

At the Trial Court Appellant offered to prove that personal property of the same class as Appellant's machinery was not taxed as "all other real estate." (R. 14-28). The trial court excluded the evidence offered by Appellant on the grounds that it was incompetent, irrelevant and immaterial. The Appellant's case in this Court is—*A state statute, which, as construed by the State Court, taxes the personal property of a laundry as real estate by virtue of the Assembled Industrial Plant Doctrine and fails to tax the personal property of other service businesses equally susceptible to the Assembled Plant Doctrine violates the equal protection clause of the 14th Amendment.*

The Pennsylvania Courts rejected Appellant's claim of discrimination and excluded the evidence offered by the Appellant (R. 14-28) on the ground that the personal property in Appellant's offer, which was not taxed, was of a different class than the machinery in Appellant's laundry. Appellant respectfully submits that such a classification is "palpably arbitrary" and without a "rational basis."

The classification created by the legislature is "all other real estate." The Supreme Court of Pennsylvania has broadened this classification to include *personal property of Appellant's laundry* by virtue of the Assembled Industrial Plant Doctrine.

The Act, as construed by the Court, taxes the washing machines in Appellant's laundry and does not tax the washing machines in self-serving laundries.

The Act, as construed, taxes sewing machines which are used to replace buttons on laundered clothes in Appellant's laundry and does not tax the sewing machines in clothing stores, necessary for the alteration of clothes.

The pressers in Appellant's laundry are taxed while identical pressers in hotels are not taxed.

Dish washing machines, ice boxes, deep freezes and other equipment necessary for the operation of restaurants are not taxed while the machinery necessary for the operation of Appellant's laundry is taxed.

Motion picture machines, projectors, sound machines and other equipment necessary for the operation of a theater are not taxed while the machinery necessary for the operation of Appellant's laundry is taxed.

Lathes, pressers, jacks, compressors and other equipment necessary for the operation of automobile repair businesses are not taxed while machinery necessary for the operation of a laundry is taxed.

There are numerous other service businesses containing machinery and equipment necessary for their

operation, which machinery is likewise not taxed. (R. 14-28).

There is no rational basis for the discrimination between Appellant's machinery and the machinery of the other service businesses which is not taxed.

A laundry is a service business. The businesses enumerated in Appellant's offer are also service businesses. The machinery in Appellant's laundry which is taxed is personal property unattached to the freehold. The machinery in the other service businesses not taxed is personal property unattached to the freehold. The machinery in Appellant's laundry which is taxed is essential to the operation of a laundry. The machinery in the other service businesses not taxed is essential to their operation. *What is the difference between the pressers in Appellant's laundry and the identical pressers in hotels and clothing stores? What is the difference between the sewing machines in a clothing store and the sewing machines in a laundry? What is the difference between the jacks, compressors and lathes in an automobile repair shop and the machinery in Appellant's laundry? What is the difference between the washing machines in Appellant's laundry and the washing machines in self-serving laundries?*

The Supreme Court of Pennsylvania construed the Act to tax the machinery of the laundry as all other real estate by holding that the machinery was essential to the laundry's operation. The Supreme Court affirmed the Trial Court's Order excluding the evidence offered by Appellant, which evidence would show that the machinery essential to the operation of the other service

businesses was *not* taxed, although personal property of the same class as Appellant's machinery.

Appellant submits that such discrimination violates the equal protection clause of the 14th Amendment and such action by the States has been repeatedly struck down by this Court. *Sunday Lake Iron Co. v. Wakefield Twp.*, 247 U. S. 350 (1917); *Sioux City Bridge Co. v. Dakota Co., Neb.*, 260 U. S. 441 (1923); *Cumberland Coal Co. v. Board of Tax Revision*, 284 U. S. 23 (1931); *Concordia Fire Ins. Co. v. Ill.*, 292 U. S. 535 (1934)

Conclusion.

Appellant instituted this appeal from the Assessment for 1948, 1949 and 1950 for the sole purpose of litigating the federal question From the very nature of the case as presented the Pennsylvania Courts necessarily decided a federal question. There is no adequate state ground to support the decision.

The federal question presented is substantial. The Pennsylvania Act of 1933, as construed, taxes the personal property of Appellant's laundry and does not tax personal property of the same class in other service businesses.

For these reasons Appellant requests that Appellee's Motion to Dismiss or Affirm be denied and that the judgment of the Supreme Court of Pennsylvania be reversed.

Respectfully submitted,

MAHLON E. LEWIS.

Ecced